Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	))	CC Docket No. 96-45
	)	
1998 Biennial Regulatory Review - Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms	)))))))	CC Docket No. 98-171
	)	
Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990	)))	CC Docket No. 90-571
	)	
Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size	))))	CC Docket No. 92-237 NSD File No. L-00-72
	)	
Number Resource Optimization	)	CC Docket No. 99-200
	)	
Telephone Number Portability	)	CC Docket No. 95-116
	)	
Truth-in-Billing and Billing Format	)	CC Docket No. 98-170

To: The Commission

REPLY COMMENTS OF VERIZON WIRELESS
ON PETITIONS FOR RECONSIDERATION

Verizon Wireless submits the following reply to the oppositions and comments on the petitions for reconsideration[1] of the universal service *December 2002 Order*.[2] The

---

1 *Petitions for Reconsideration of Action in Rulemaking Proceedings,* Public Notice, Report No. 2593 (rel. Feb. 5, 2003), 68 F.R. 6918 (Feb. 11, 2003).

comments show broad agreement among all types of carriers with most points in Verizon Wireless' petition, as well as the Nextel Communications, Inc. petition. The Commission should grant these two petitions.

I. THE CHANGES TO USF COST RECOVERY ARE NOT JUSTIFIED FOR WIRELESS CARRIERS

Some commenters argue that it would be inequitable to allow one segment of carriers to continue to use averaged line items while forbidding others to do so.[3] However, the unique nature of wireless service and the contractual constraints faced by wireless carriers justify restoring CMRS carriers' flexibility to recover their USF contribution as they had prior to the *December 2002 Order.* There are significant differences between wireless carriers and other carriers that justify a wireless exemption to the billing rules.

First, no commenter dispels the fact that the new restrictions are inconsistent with the regulatory structure for CMRS. As Nextel points out, the restrictions on CMRS carriers' billing "contradict[] nearly a decade's worth of law and Commission policy expressly favoring deregulation of wireless carrier rates and reliance on the market to ensure reasonable rates and practices."[4] Particularly in light of the complete lack of

---

[2] *Federal-State Joint Board on Universal Service; 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms* Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952 (2002) ("*December 2002 Order*").

[3] *See, e.g.,* AT&T comments at 2; WorldCom comments at 3.

[4] Nextel Comments at 3 (citing Nextel Petition at 7-17).

record support for a need for the regulations in the wireless marketplace, Verizon Wireless agrees with Nextel that the restrictions are "arbitrary and unexplained."[5]

Second, wireless carriers face significant contractual restrictions not faced by other carriers that constrain their ability to alter their customer charges.[6] Unlike LECs, CMRS carriers are forbidden from filing tariffs, and thus cannot provide constructive notice of the billing change through a tariff filing. Unlike IXCs, CMRS carriers' relationships with their customers are governed by written contracts with set terms for set periods and termination provisions. The new rules may require wireless carriers to provide repeated, costly notifications to customers through bill messages and other communications. Customers may be confused by the constant changes in assessments, which will yield increased calls to customer care representatives and additional customer notifications. In contrast, an averaged monthly charge, that could remain constant for a longer time period, might be more easily understood by customers and require fewer notifications of billing changes.

Third, there was no showing in the record of the proceeding or in the comments in opposition to Verizon Wireless' petition of a need to impose billing restrictions on wireless carriers. Rather than burden the entire industry with additional restrictions, the Commission should use its existing enforcement authority to deter and/ or punish carriers that over-assess customers in violation of Sections 201 and 202.

---

[5] *Id.*

[6] Verizon Wireless Petition at 7.

Fourth, carriers commenting on the petitions for reconsideration generally agreed with Verizon Wireless that the new restrictions on carriers' USF cost recovery will be so costly and burdensome that they cannot be justified for an interim measure.[7] Verizon Wireless does not object to granting the relief it requests to all types of carriers, particularly due to the interim nature of the requirements. The costs and burdens of implementing the billing system and customer notification changes are particularly difficult to justify because they may be only short-lived. Carriers may be required to change their billing systems and re-educate customers yet again, within months of implementing these billing changes.

Fifth, grant of reconsideration would be consistent with the Commission's own approach in the *Second Further Notice*. At the same time that carriers are required to implement significant system changes to multiple billing systems, we are also being asked to comment on three new connection-based proposals, none of which would incorporate a percentage-based, customer specific collection method. Instead, the per-connection based proposals would yield averaged, (per-customer, per-number or per-line) charges for customers. If the Commission believes it is necessary to prohibit carriers from using averaged charges to recover their USF costs today, how can any of the three per-connection proposals pass muster before the Commission in the *Second Further*

---

[7] Verizon Wireless Petition at 3-5. *See, e.g. also* AT&T comments at 4; CTIA comments at 3; Nextel comments at 9; Verizon comments at 4-5; WorldCom comments at 3. *But see* AOL Time Warner comments at 5 (AOL Time Warner, as an Internet Service Provider, is primarily a consumer, rather than a provider, of telecommunications services). *But see also* WorldCom comments at 3 (arguing against allowing petitioning carriers, but not others, to avoid the "no averaging" rule, but acknowledging that "[n]o carrier is untouched by the additional investment required to comply" with the new rules).

Notice proceeding? The Commission cannot have it both ways — and carriers should not be directed to waste resources on competing objectives.

II. THE COMMENTS DO NOT REFUTE THAT THE NEW RESTRICTIONS ARE AN UNCONSTITUTIONAL INFRINGEMENT OF COMMERCIAL SPEECH

Verizon Wireless demonstrated in its Petition that the new restrictions on wireless carriers' USF cost recovery are an impermissible infringement of commercial speech rights.[8] Only one commenter even tried to refute this argument, and its rebuttal is not persuasive.[9] NASUCA baldly states that, "the prohibition is no more intrusive than necessary to serve the [government's] interest."[10] Yet Verizon Wireless provided several examples in its Petition of less restrictive ways that the Commission could have achieved its goals, including simple restrictions on discrimination among customer classes and prohibitions on aggregate over-recovery.[11]

As Verizon Wireless pointed out in its Petition, [12] there is simply no evidence of a consumer cost recovery problem in the CMRS marketplace and thus no justification for the extensive restrictions on commercial speech adopted in the *December 2002 Order.*

III. THE COMMENTS SUPPORT VZW'S POSITION THAT THE COMMISSION SHOULD NOT APPLY THE NEW REPORTING

---

[8] Verizon Wireless Petition at 9-13.

[9] *See* NASUCA comments at 6-7.

[10] NASUCA comments at 7.

[11] Verizon Wireless Petition at 10-12.

[12] Verizon Wireless Petition at 12.

REQUIREMENTS FOR FOURTH QUARTER 2002 RETROACTIVELY.

Every commenter addressing the issue agreed that the Commission should not apply the new rules (and, particularly, the revised wireless safe harbor) to carrier contributions before the new rules became effective.[13] The Commission's attempt to apply the new USF rules (which did not go into effect until January 29, 2003[14]) to Fourth Quarter 2002 revenue represents impermissible retroactive rulemaking. Absent a clear delegation of authority from Congress, a federal agency may not promulgate rules with retroactive effect.[15] A rule is retroactive if it "impair[s] rights a party possessed when he acted, increase[s] a party's liability for past conduct, or impose[s] new duties with respect to transactions already completed."[16]

The purpose of the Form 499-A filing is to allow for "true-ups" for over- or under assessments of carriers during the previous fiscal year, and to determine assessments for other government mandates (*i.e.*, LNP and TRS) based on the actual end-of the year revenue results. The Commission cannot use this end-of the year process to retroactively apply the new contribution methodology to events preceding the effective date of the new rules. To do so would retroactively increase the contribution liability of many wireless carriers, and increase wireless carrier assessments for the LNP and TRS programs. As the Commission noted, 43 percent of mobile wireless filers, representing 78 percent of

---

[13] *See, e.g.,* CTIA comments at 6-7; Sprint comments at 7-8.

[14] 67 Fed. Reg. 79525 (Dec. 30, 2002).

[15] *See Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204 (1988). S*ee also* 5 U.S.C. § 551(4) (defining "rule" as "an agency statement of general or particular applicability and *future effect*) (emphasis added).

[16] *Landgraf v. USI Film Products*, 114 S Ct 1483, 1505 (1994).

mobile wireless end-user telecommunications revenues, availed themselves of the prior safe harbor percentage in the latest Form 499-Q filed for the assessment of contributions in the fourth quarter for 2002.[17] Requiring these carriers to use the new safe harbor percentage will inevitably increase their liability for that quarter. The effect of the rule thus increases the liability for past conduct and is impermissibly retroactive.[18]

Imposing additional contribution obligations on wireless carriers through true-ups is also patently unfair because the new cost recovery restrictions may prevent carriers from recovering the additional contribution amounts from their customers. Under the new rules, carriers are prohibited from assessing universal service line items that exceed that quarter's contribution factor times the interstate portion of the bill. As a result, wireless carriers may be precluded from recovering any true-up amounts that they are forced to pay as a result of the application of the revised wireless safe harbor. Because only wireless carriers are affected by the revised safe harbor, this result will be inequitable and discriminatory against wireless carriers.

---

17 *December 2002 Order* at 14.

18 *Regions Hospital v. Shalala,* 522 U.S. 448 (1998) does not compel a different result. In that case, the court found that the agency's rule, which allowed "re-audit" of cost reimbursements three years in the past simply sought to ensure that the reimbursement principles were followed that were *in effect at the time the costs were incurred.*

CONCLUSION

The comments on the petitions for reconsideration demonstrate broad support for Verizon Wireless' Petition. The Commission should grant the petition without delay, to avoid any further unnecessary expenditures of scarce capital to implement the unnecessary restrictions in the *December 2002 Order*. Moreover, the Commission should clarify before the April 1, 2003 due date for the 499-A filing that wireless carriers are not required to utilize the new safe harbor calculation to in calculating the final interstate revenue calculation for 2002.

Respectfully submitted,

VERIZON WIRELESS

By: John T. Scott, III

John T. Scott III
Anne E. Hoskins
1300 Eye Street, NW
Suite 400 West
Washington, D.C. 20005
(202) 589- 3740

Its Attorneys

March 10, 2003